

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

KIMBERLY LANDIS and **ALVA NELSON**,
as parents and guardians of A.N., a minor,

Plaintiffs,

v.

Civil Action No. 2:11-CV-101
(BAILEY)

HEARTHMARK, LLC, d/b/a Jarden Home
Brands, **WAL-MART STORES, INC.**,
C.K.S. PACKAGING, INC., **PACKAGING**
SERVICE COMPANY, INC., and
STULL TECHNOLOGIES, INC.,

Defendants/Third Party Plaintiffs,

v.

KIMBERLY LANDIS and **ALVA NELSON**,
in their individual capacities,

Third Party Defendants.

**ORDER GRANTING C.K.S. PACKAGING, INC.'S *DAUBERT* MOTION
TO EXCLUDE CERTAIN OPINIONS AND TESTIMONY OF PACKAGING
SERVICE CO., INC.'S PUTATIVE COMBUSTION EXPERT DR. CARL ABRAHAM**

Pending before this Court is C.K.S. Packaging, Inc.'s ***Daubert*** Motion to Exclude Certain Opinions and Testimony of Packaging Service Co., Inc.'s Putative Combustion Expert Dr. Carl Abraham [Doc. 541]. No party has filed a response to the Motion and the same is ripe for decision.

In the above Motion, the defendant seeks to exclude certain opinions or testimony

of Dr. Abraham regarding C.K.S.' duties as a bottle manufacturer, under ***Daubert v. Merrell Dow Pharms., Inc.***, 509 U.S. 579 (1993).

Specifically, during his deposition, in response to questioning from plaintiffs' counsel and over objection, Dr. Abraham opined that C.K.S. had a duty to determine that ethanol was being used in a 32 ounce charcoal lighter fluid bottle. The Motion will be granted for the following reasons:

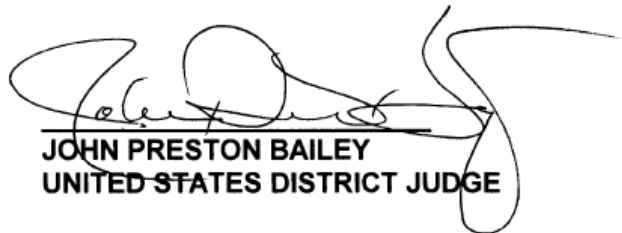
1. In his report, Dr. Abraham did not offer any opinion regarding C.K.S.' duties. See ***Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.***, 318 F.3d 592, 595-96 (4th Cir. 2003);
2. This opinion is beyond the scope of Dr. Abraham's retention;
3. The question of duty is an issue of law for the Court. See ***Assurance Co. of America v. York Intern., Inc.***, 305 Fed.Appx. 916, 926 (4th Cir. 2008); Syl Pt. 5 ***Eastern Steel Constructors, Inc. v. City of Salem***, 209 W.Va. 392, 549 S.E.2d 266 (2001) ("The determination of whether a defendant in a particular case owes a duty to the plaintiff is not a factual question for the jury; rather the determination of whether a plaintiff is owed a duty of care by a defendant must be rendered by the court as a matter of law." Syllabus point 5, ***Aikens v. Debow***, 208 W.Va. 486, 541 S.E.2d 576 (2000).");
4. Dr. Abraham is not qualified to testify as to legal standards;
5. Dr. Abraham is not qualified to testify as to industry standards.

Accordingly, C.K.S. Packaging, Inc.'s ***Daubert*** Motion to Exclude Certain Opinions and Testimony of Packaging Service Co., Inc.'s Putative Combustion Expert Dr. Carl Abraham [Doc. 541] is **GRANTED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: January 15, 2014.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE